IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 649 of 2002

in

SPECIAL CIVIL APPLICATIONNo 8509 of 2002

with

CIVIL APPLICATION No 6322 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VICHARTI & VIMUKT JATI MAHASANGH (GUJARAT)

Versus

STATE OF GUJARAT

Appearance:

MRS KETTY A MEHTA for Appellant No.

MS HARSHA DEVANI AGP for Respondents

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE J.R.VORA

Date of decision: 24/09/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE J.N.BHATT)

Admit. Service of notice is waived by learned AGP, Ms.Harsha Devani for the respondents. Upon joint request and in view of the urgency in the matter, the Letters Patent Appeal is taken up for final hearing today itself.

The short question which has emerged for consideration in this appeal under Clause 15 of the Letters Patent Appeal challenging the order of the learned single Judge, dated 4.9.2002, recorded in Special Civil Application No.8509 of 2002, is as to whether the refusal of interim relief, in the facts and circumstances of the case, in the writ petition, by the learned single Judge is vulnerable, and if yes, what should be the interim relief ?

We have heard the learned counsel for the appellants and learned AGP on this point. In fact, Letters Patent Appeal is circumscribed only challenging the interim order of the learned single Judge. Ordinarily, the exercise of discretion by the learned single Judge by invoking the provisions of Article 226, for interim orders, is not interfered with, and, we are conscious of this proposition. The case of the appellant has been that in the case of Shah Dimple v. State of Gujarat, 40 GLR 1491, this Court has interpreted Rule 2.5 of admission rules and the circulars in this behalf issued for the years 1996-96, 1996-97, 1997-98.

Rule 2.5 reads as under:

> "2.5 In case it is found in any particular year that the number of students belonging to respective communities and or categories mentioned above are not available for the reserved seats for such communities/categories, the vacant seats from that reservation shall be treated as unreserved seats and filled up from amongst the students from the open merit list of the respective Board/Council."

The appellants belong to Nomadic Tribes and De-notified

Tribes (NT and DNT) and they claim that they are entitled to be considered for the purpose of admission in medical colleges, on the reserved quota of scheduled tribes as per the interpretation of this Court in Shah Dimple (supra) and confirmed in LPA No.1170 of 1998 against which the SLP filed before the Hon'ble Supreme Court also came to be dismissed. In support of the submissions, circular of the current year dated 15.6.2002 by the Government of Gujarat in Social Justice and Empowerment (Scheduled Tribes) Department is, also, relied. It is clear from the circular that the Government decision is to treat the NT/DNT in the reserved category of Scheduled Tribe for the purpsoe of admission in medical and engineering and such other faculties where reservation quota is fixed for such tribe. It is, also, very clear from the said circular that for the previous years, this benefit was granted by virtue of circular. It is stated at the Bar that similarly since 1995-96, 1996-97, 1997-98 also the same benefit has been conferred.

Considering the three celebrated principles governing the grant of interlocutory order, namely, prima facie case, balance of convenience and irreparable loss and the aforesaid factual position and the earlier decision of this Court, in our opinion, interim relief is required to be granted so as to protect the rights of the weaker and vulnerable class like NT/DNT. Similar interim relief, admittedly, came to be granted in various Special Civil Applications since last four years. We are, therefore, satisfied that the following interim relief in the facts and circumstances of the case will be justified.

By way of interim relief, until disposal of the writ petition pending before the learned single Judge, it is hereby directed that surplus seats that may become available in the reserved quota of Scheduled Tribes will not be filled up by general category in so far as admission to medical colleges is concerned.

In terms of the aforesaid directions, discussions and observations, this appeal shall stand allowed accordingly, without any order as to costs.

A parting caution may be sounded that since the matter is pending before the learned single Judge, we have thought it expedient not to meticulously probe into the merits and therefore, we have considered prima facie material available and submissions for the purpose of consideration of interlocutory order. With these observations, the appeal shall stand allowed.

In view of the order passed in the LPA, the Civil Application does not survive. Accordingly, it also stands disposed of.

Direct service is permitted.

(J.N.Bhatt, J.)

(J.R.Vora, J.)

(vjn)